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the surface of a street or elevated above it is correct. It seems clear that the purpose of the Mueller law was to enable the cities of Illinois to provide adequate transportation facilities for their citizens within their corporate limits. If this was the intent of the legislators, the question then resolves itself into an inquiry as to whether subways are necessary or advantageous to a successful solution of the transportation problem in Chicago. This is a legislative or administrative, rather than a judicial question. The expenditures which the complainant here sought to enjoin were not really for the construction of subways but were for the procuring of accurate information, data, etc., to assist the council and the citizens in answering the question above stated. In the judgment of the council and of the citizens of Chicago who approved the traction ordinances at the April election, 1907, the necessity for subways was great enough to warrant an investigation into their practicability in connection with the street railway system of the city. This being the situation and there not being a clear case of misjudgment, the court would scarcely be expected to overturn the conclusions of the council as to the advisability of the expenditures.

G. S.

CONSTITUTIONALITY OF LEGISLATION DESIGNATING TIME AND MANNER OF PAYMENT OF WAGES.—Not infrequently the legislatures of various states have deemed it advisable to provide by law for the time and manner of payment of wages of men engaged in certain designated employments; and these laws have been the cause of considerable litigation. Their validity has been challenged mainly on the ground of deprivation of property without due process of law and denial of the equal protection of the law, the contention being that the refusal of the privilege of contracting for the manner and time of payment is a deprivation of liberty and property, and the classification of men in certain sorts of work as being subject to the provisions of the statutes while others were not is a denial of the equal protection of the law. The conclusions of the courts have not been entirely harmonious, and while many of the decisions may be reconciled or explained on one ground or another, chiefly the wording of the particular statutes involved, not all of them may be disposed of in that way. Because of this lack of harmony the decision of the New York Court of Appeals in *New York Cent. & H. R. R. Co. v. Williams*, 92 N. E. 404, is of especial interest.

In that case the court considered the constitutionality of certain portions of the New York labor law, the sections in controversy being in part as follows: "Sec. 10. Cash Payment of Wages. Every manufacturing, mining, quarrying, mercantile, railroad, street railway, canal, steamboat, telegraph and telephone company, every express company, every corporation engaged in harvesting and storing ice, and every water company, not municipal, and every person, firm or corporation, engaged in or upon any public work for the state or municipal corporation thereof, either as a contractor, or a subcontractor therewith, shall pay to each employé engaged in his, their or its business the wages earned by such employé in cash. No such company, person, firm or corporation shall hereafter pay such employés in script, com-

monly known as store orders." Consol. Laws, c. 31, § 10. "Sec. 11. When Wages are to be Paid. * * * But every person or corporation operating a steam surface railroad shall, on or before the first day of each month, pay the employés thereof the wages earned by them during the first half of the preceding month ending with the fifteenth day thereof, and on or before the fifteenth of each month pay the employés thereof the wages earned by them during the last half of the preceding calendar month." Consol. Laws, c. 31, § 11. By Section 12 of the same statute it is provided that if a corporation shall fail to pay the wages of an employé as above provided it shall forfeit to the state fifty dollars for each such failure, to be recovered by the factory inspector in his name of office in a civil action. The action was a suit in equity against the factory inspector to restrain him from instituting any proceeding against the plaintiff for the collection of penalties for violations of the provisions above referred to. The court held that the statute requiring railroads to pay their employés semi-monthly in cash was valid as an amendment to their corporate charters.

The precise limits of the power of a state under the reserved power of amendment to amend corporate charters are uncertain. In *COOK, CORPORATIONS*, § 501, the author states that "It should be restricted to those amendments only in which the state has a public interest." "A power reserved to the legislature to alter, amend, or repeal a charter authorizes it to make any alteration or amendment of a charter granted subject to it which will not defeat or substantially impair the object of the grant, or any rights vested under it, and which the legislature may deem necessary to secure either that object or any public right. *Commissioners of Inland Fisheries v. Holyoke Water Power Co.*, 104 Mass. 446, 451; *Holyoke Co. v. Lyman*, 15 Wall. 500, 522." *Close v. Glenwood Cemetery*, 107 U. S. 466, 476. This doctrine reaffirmed in *New York & New England R. R. Co. v. Bristol*, 151 U. S. 556, and *Berea College v. Kentucky*, 211 U. S. 45. The New York legislature required that a certain street railroad company then in existence should pay to the city one per cent of its gross receipts instead of a license fee of fifty dollars per car as required theretofore. In *Mayor, etc. v. Twenty-third St. R. Co.*, 113 N. Y. 311, this legislation was upheld as an amendment of the company's charter. In the opinion of the court, Judge EARL said: "It is difficult to put precise limits upon the power of the legislature thus reserved over corporations created by it or under its authority. Under its reserved power it cannot deprive a corporation of its property, or interfere with, or annul its contracts with third persons. (*People v. O'Brien*, 111 N. Y. 1). But it may take away its franchise to be a corporation, and may regulate the exercise of its corporate powers. As it has the power utterly to deprive the corporation of its franchise to be a corporation, it may prescribe the conditions and terms upon which it may live and exercise such franchise. It may enlarge or limit its powers, and it may increase or limit its burdens. It is sometimes said that the alteration under such reserved power must, however, be reasonable, and it must always be legislative in its character, and consistent with the scope and objects of the corporation as it was originally constituted." It has been stated that under the reserved power the legisla-

ture has only that right to amend the charter which it would have had in case the Dartmouth College case had decided that the federal constitution did not apply to corporate charters. *Garey v. St. Joe Mining Co.*, 32 Utah 497, 511, 91 Pac. 369. It was because of the decision in the Dartmouth College case that the states have reserved the power of amendment. See further on this question as to the scope of the power of amendment, COOK, CORPORATIONS, Ed. 6, § 501, wherein the cases are collected, and *Venner v. Chicago C. Ry. Co.*, 92 N. E. 643 (Illinois, 1910). And a statute may operate as an amendment of the charter of a corporation even though such statute does not purport expressly to amend such charter. *Pratt Institute v. City of New York*, 183 N. Y. 151, 75 N. E. 1119; *People ex rel. Cooper Union v. Gass*, 190 N. Y. 323, 83 N. E. 64, 123 Am. St. Rep. 549; *Berea College v. Kentucky*, supra; *City of Roxbury v. Boston & Providence Railroad Corporation*, 6 Cush. 424; *Bangor, O. & M. R. R. Co. v. Smith*, 47 Me. 34. Contra: *State v. Hawn*, 61 Kan. 146, 59 Pac. 340, 47 L. R. A. 369. See also, *Bedford Quarries v. Bough*, 168 Ind. 671, 80 N. E. 529.

Legislation similar in its general nature to that upheld in the principal case has been held valid as being within the reserved power of amendment in *Lawrence v. Rutland R. R.*, 80 Vt. 370, 67 Atl. 1091, 15 L. R. A. [N. S.] 350; *Shaffer & Munn v. Union Mining Co.*, 55 Md. 74; *State v. Brown & S. Mfg. Co.*, 18 R. J. 16, 17 L. R. A. 856; *St. Louis, Iron Mountain & St. P. Ry. Co. v. Paul*, 173 U. S. 404, 19 Sup. Ct. 419, 43 L. Ed. 746. See also *Opinion of Justices*, 163 Mass. 589, 40 N. E. 713, 28 L. R. A. 344. In the Vermont case and Paul case stress was laid on the fact that in railroad corporations by which in both cases the constitutionality of the statutes was questioned the public had an interest, and the supreme court of Vermont explained the conclusions of some of the courts which had held like legislation invalid on the basis that in those cases there were considered amendments to charters of corporations in which there was no public interest. In *Leep v. Railway Co.*, 58 Ark. 407, the supreme court of Arkansas had under consideration the same statute involved in the Paul case, supra, and after observing that railroads are common carriers, and so charged with a public trust, said: "If the legislature, in its wisdom, seeing that their employes are and will be dependent on their labor for a livelihood, and unable to work on a credit, should find that better servants and service could be secured by the prompt payment of their wages on the termination of their employment, and that the purpose of their creation would be more nearly accomplished, it might require them to pay for the labor of their employes when the same is fully performed, at the end of their employment. If it be true that in doing so it would interfere with contracts which are purely and exclusively private, and thereby limit their right to contract with individuals, it would nevertheless, under such circumstances, have the right to do so under the reserved power to amend." In this case the Arkansas court held the statute unconstitutional so far as it applied to employers not corporations. On this same point Chief Justice FULLER, in the Paul case, said: "In view of the fact that these corporations were clothed with a public trust, and discharged duties of public consequence, affecting the community at

large, the supreme court held the regulation, as promoting the public interest in the protection of employ  s to the limited extent stated, to be properly within the power to amend reserved under the state constitution. Inasmuch as the right to contract is not absolute, but may be subjected to the restraints demanded by the safety and welfare of the State, we do not think that conclusion in its application to the power to amend can be disputed on the ground of infraction of the Fourteenth Amendment. *Orient Ins. Co. v. Daggs*, 172 U. S. 557; *Holden v. Hardy*, 169 U. S. 366; *St. Louis & San Francisco Ry. v. Matthews*, 165 U. S. 1."

On the other hand, in *Toledo, St. L. & W. R. Co. v. Long*, 169 Ind. 316, 82 N. E. 757, a statute requiring every company, corporation, or association doing business in the state to pay its employ  s who are engaged in manual or mechanical labor, at least once a month, and which provided for a penalty for non-compliance together with attorney's fees, was held violative of the fourteenth amendment as imposing on companies, corporations, and associations burdens not imposed on individuals. In the following cases statutes regulating manner, or time of payment of wages were held invalid: *State v. Goodwill*, 33 W. Va. 179, 6 L. R. A. 621; *Godcharles v. Wigeman*, 113 Pa. St. 431; *Millett v. People*, 117 Ill. 294; *State v. Hann*, 61 Kan. 146; *State v. Loomis*, 115 Mo. 307, 21 L. R. A. 789; *Braceville Coal Co. v. People*, 147 Ill. 66, 22 L. R. A. 340; *Slocum v. Bear Valley Irr. Co.*, 122 Cal. 555, 55 Pac. 403, 68 Am. St. Rep. 68; *Johnson v. Goodyear Mining Co.*, 127 Cal. 4, 59 Pac. 304, 47 L. R. A. 338, 78 Am. St. Rep. 17. In but very few of these cases was the question as to the reserved power to amend raised, and most of the cases went off on the ground of improper classification. In the California cases the statutes held invalid provided for a lien on the property of the corporation in case of failure to pay wages as provided, and the decisions seem to have been placed largely on that point. However in *Skinner v. Garnett Gold Min. Co.*, 96 Fed. 735, the federal court upheld the statute considered in the later California case above cited.

In *Braceville Coal Co. v. People*, supra, in which a statute requiring corporations engaged in certain designated businesses to pay their employ  s weekly was held unconstitutional on the ground of improper classification, the court observed that the restriction upon the corporation was an abridgment of the right of the employ  s to contract. In *Lawrence v. Rutland R. Co.* supra, this point was answered by the court as follows: "But the restriction of their (the employ  s) rights is not direct, but results from the restriction of the defendant's rights; and, as that restriction is good as to the defendant, the rights of its employ  s are not thereby infringed, for they have no right to demand greater liberty for the defendant in order that their liberty may be enlarged."

It is impossible to tell just how much the decision of the court in the principal case was based upon the public nature of the business of railroad corporations. It should be noted that section 10 of the act under consideration required all corporations named to pay their employ  s in cash,—and some of the corporations named are not engaged in any business of a public nature. By section 11 it is first provided that "Every corporation * * * shall

pay weekly to each employé," following which is the provision regarding steam surface railroads above quoted. In *Knoxville Iron Co. v. Harbison*, 183 U. S. 13, 22 Sup. Ct. 1, 43 L. Ed. 55, the Supreme Court upheld a Tennessee statute requiring the redemption of store orders issued in payment of wages in lawful money at their face value as being within the police power. What the conclusion of the court in the principal case would have been had the question of the constitutionality of the statute been raised by a corporation not engaged in a business of a public nature may perhaps be not entirely certain. It should be noted also that the court did not pass upon the constitutionality of the statute as applied to employers other than railroad corporations.

R. W. A.

PRIORITY IN BANKRUPTCY BETWEEN WAGE CLAIMS AND VALID LIENS.—Considerable difficulty has arisen in the Federal courts over the question of the right of valid lien-holders to have their secured claims discharged out of the funds in the hands of the trustee in bankruptcy, in preference to wage claimants. This difficulty has grown up through the application of § 67 d of the Bankruptcy Act of 1898, with reference to § 64 b of the same act. Section 67 subdivision d, of this Act provides that valid liens, to the extent of the present consideration given for them, are not to be affected by the Act. Section 64 subdivision b provides the order of payment for debts which have priority, fourth in this order, according to clause 4 of subdivision b, are wages of workmen, clerks, etc., earned within three months preceding the date of the bankruptcy proceedings, not exceeding three hundred dollars to each claimant. Fifth in this order are debts owing to any person who by the laws of the States or the United States is entitled to priority.

The above question arose in the recent case of *In re Yoke Vitrified Brick Co.* (1910), — D. C. D., Kan., 3rd D. —, 180 Fed. 235. In this case, at the time the company was adjudicated a bankrupt there were a number of valid mortgage liens on the company's funds that had come into the hands of the trustee in bankruptcy. Certain assignees of wage claims against the bankrupt's estate, which conformed to the requirements of § 64 b (4) of the Bankruptcy Act, petitioned the referee to allow these claims priority over the claims of the lien-holders, upon the ground that a statute in the state where the bankrupt company was located, provided for such a preference. The order of the referee denying the claim of the petitioners being brought to the District Court for review, it was held that the wage claims were not entitled to priority over the fixed liens. The court in reaching this conclusion, reasoned that such liens come within § 67 d of the Bankruptcy Act, and as such liens are not to be in any way affected by the act, neither their validity nor priority can be affected thereby. And further, that as state statutes are only given effect by § 64 b, cl. 5, the operation of that clause must be so circumscribed as not to affect the rights of lien-holders under § 67 d.

If valid liens are entitled to be discharged out of the bankrupt's estate in preference to wage claims, or other priorities under § 64 b, it must be by virtue of some provision of the Bankruptcy Act creating such a preference directly, or by recognizing a state law which determines the priority of cer-